

AMENDED IN ASSEMBLY AUGUST 8, 2008

AMENDED IN ASSEMBLY JULY 1, 2008

AMENDED IN ASSEMBLY JUNE 9, 2008

SENATE BILL

No. 1284

Introduced by Senator Lowenthal

February 19, 2008

An act to amend Section 214 of, and to add Section 214.16 to, the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

SB 1284, as amended, Lowenthal. Property tax: welfare exemptions: rental housing and related facilities.

Existing property tax law establishes a partial welfare exemption for property used exclusively for rental housing and related facilities that are owned and operated by either of any certain types of nonprofit entities or veterans' organizations that meet specified exemption requirements, if either of certain qualifying criteria are met.

This bill would authorize the partial welfare exemption to apply to property that was previously purchased and owned by the Department of Transportation, as specified, and that is now solely owned by an organization that qualifies as an exempt organization, as specified. This bill would require any outstanding tax, *interest*, or *penalty* that was levied or imposed upon property that satisfies these criteria for the partial welfare exemption between January 1, 2002, and January 1, 2009, be canceled if the owner of the property certifies that specified conditions were met at the time the tax was levied. This bill would make findings and declarations with regard to the cancellation of this tax.

Section 2229 of the Revenue and Taxation Code requires the Legislature to reimburse local agencies annually for certain property tax revenues lost as a result of any exemption or classification of property for purposes of ad valorem property taxation.

This bill would provide that, notwithstanding Section 2229 of the Revenue and Taxation Code, no appropriation is made and the state shall not reimburse local agencies for property tax revenues lost by them pursuant to the bill.

This bill would take effect immediately as a tax levy.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) That maintaining the affordability of lower income housing
4 fulfills both of the following:

5 (1) The legal commitment entered into by the Department of
6 Transportation in a consent decree to replace affordable housing
7 stock lost as a result of the construction of the Century Freeway.

8 (2) Addresses California's serious shortage of decent, safe, and
9 sanitary housing, which persons and families of low or moderate
10 income, including the elderly and handicapped, can afford.

11 (b) That expanding the criteria for the partial welfare exemption,
12 as provided by this act, extends the application of the partial
13 welfare exemption in a consistent manner to all eligible taxpayers
14 in order to ensure that all eligible and similarly situated taxpayers
15 are treated in a fair and equitable manner.

16 (c) Therefore, the Legislature finds and declares that this act
17 serves a public purpose of the state.

18 SEC. 2. Section 214 of the Revenue and Taxation Code is
19 amended to read:

20 214. (a) Property used exclusively for religious, hospital,
21 scientific, or charitable purposes owned and operated by
22 community chests, funds, foundations, limited liability companies,
23 or corporations organized and operated for religious, hospital,
24 scientific, or charitable purposes is exempt from taxation, including
25 ad valorem taxes to pay the interest and redemption charges on
26 any indebtedness approved by the voters prior to July 1, 1978, or

1 any bonded indebtedness for the acquisition or improvement of
2 real property approved on or after July 1, 1978, by two-thirds of
3 the votes cast by the voters voting on the proposition, if:

4 (1) The owner is not organized or operated for profit. However,
5 in the case of hospitals, the organization shall not be deemed to
6 be organized or operated for profit if, during the immediately
7 preceding fiscal year, operating revenues, exclusive of gifts,
8 endowments and grants-in-aid, did not exceed operating expenses
9 by an amount equivalent to 10 percent of those operating expenses.
10 As used herein, operating expenses include depreciation based on
11 cost of replacement and amortization of, and interest on,
12 indebtedness.

13 (2) No part of the net earnings of the owner inures to the benefit
14 of any private shareholder or individual.

15 (3) The property is used for the actual operation of the exempt
16 activity, and does not exceed an amount of property reasonably
17 necessary to the accomplishment of the exempt purpose.

18 (A) For the purposes of determining whether the property is
19 used for the actual operation of the exempt activity, consideration
20 shall not be given to use of the property for either or both of the
21 following described activities if that use is occasional:

22 (i) The owner conducts fundraising activities on the property
23 and the proceeds derived from those activities are not unrelated
24 business taxable income, as defined in Section 512 of the Internal
25 Revenue Code, of the owner and are used to further the exempt
26 activity of the owner.

27 (ii) The owner permits any other organization that meets all of
28 the requirements of this subdivision, other than ownership of the
29 property, to conduct fundraising activities on the property and the
30 proceeds derived from those activities are not unrelated business
31 taxable income, as defined in Section 512 of the Internal Revenue
32 Code, of the organization, are not subject to the tax on unrelated
33 business taxable income that is imposed by Section 511 of the
34 Internal Revenue Code, and are used to further the exempt activity
35 of the organization.

36 (B) For purposes of subparagraph (A):

37 (i) "Occasional use" means use of the property on an irregular
38 or intermittent basis by the qualifying owner or any other qualifying
39 organization described in clause (ii) of subparagraph (A) that is

1 incidental to the primary activities of the owner or the other
2 organization.

3 (ii) “Fundraising activities” means both activities involving the
4 direct solicitation of money or other property and the anticipated
5 exchange of goods or services for money between the soliciting
6 organization and the organization or person solicited.

7 (C) Subparagraph (A) shall have no application in determining
8 whether paragraph (3) has been satisfied unless the owner of the
9 property and any other organization using the property as provided
10 in subparagraph (A) have filed with the assessor a valid
11 organizational clearance certificate issued pursuant to Section
12 254.6.

13 (D) For the purposes of determining whether the property is
14 used for the actual operation of the exempt activity, consideration
15 shall not be given to the use of the property for meetings conducted
16 by any other organization if the meetings are incidental to the other
17 organization’s primary activities, are not fundraising meetings or
18 activities as defined in subparagraph (B), are held no more than
19 once per week, and the other organization and its use of the
20 property meet all other requirements of paragraphs (1) to (5),
21 inclusive, of this subdivision. The owner or the other organization
22 also shall file with the assessor a copy of a valid, unrevoked letter
23 or ruling from the Internal Revenue Service or the Franchise Tax
24 Board stating that the other organization, or the national
25 organization of which it is a local chapter or affiliate, qualifies as
26 an exempt organization under Section 501(c)(3) or 501(c)(4) of
27 the Internal Revenue Code or Section 23701d, 23701f, or 23701w.

28 (E) Nothing in subparagraph (A), (B), (C), or (D) shall be
29 construed to either enlarge or restrict the exemption provided for
30 in subdivision (b) of Section 4 and Section 5 of Article XIII of the
31 California Constitution and this section.

32 (4) The property is not used or operated by the owner or by any
33 other person so as to benefit any officer, trustee, director,
34 shareholder, member, employee, contributor, or bondholder of the
35 owner or operator, or any other person, through the distribution
36 of profits, payment of excessive charges or compensations, or the
37 more advantageous pursuit of their business or profession.

38 (5) The property is not used by the owner or members thereof
39 for fraternal or lodge purposes, or for social club purposes except

1 where that use is clearly incidental to a primary religious, hospital,
2 scientific, or charitable purpose.

3 (6) The property is irrevocably dedicated to religious, charitable,
4 scientific, or hospital purposes and upon the liquidation,
5 dissolution, or abandonment of the owner will not inure to the
6 benefit of any private person except a fund, foundation, or
7 corporation organized and operated for religious, hospital,
8 scientific, or charitable purposes.

9 (7) The property, if used exclusively for scientific purposes, is
10 used by a foundation or institution that, in addition to complying
11 with the foregoing requirements for the exemption of charitable
12 organizations in general, has been chartered by the Congress of
13 the United States (except that this requirement shall not apply
14 when the scientific purposes are medical research), and whose
15 objects are the encouragement or conduct of scientific
16 investigation, research, and discovery for the benefit of the
17 community at large.

18 The exemption provided for herein shall be known as the
19 “welfare exemption.” This exemption shall be in addition to any
20 other exemption now provided by law, and the existence of the
21 exemption provision in paragraph (2) of subdivision (a) of Section
22 202 shall not preclude the exemption under this section for museum
23 or library property. Except as provided in subdivision (e), this
24 section shall not be construed to enlarge the college exemption.

25 (b) Property used exclusively for school purposes of less than
26 collegiate grade and owned and operated by religious, hospital, or
27 charitable funds, foundations, limited liability companies, or
28 corporations, which property and funds, foundations, limited
29 liability companies, or corporations meet all of the requirements
30 of subdivision (a), shall be deemed to be within the exemption
31 provided for in subdivision (b) of Section 4 and Section 5 of Article
32 XIII of the California Constitution and this section.

33 (c) Property used exclusively for nursery school purposes and
34 owned and operated by religious, hospital, or charitable funds,
35 foundations, limited liability companies, or corporations, which
36 property and funds, foundations, limited liability companies, or
37 corporations meet all the requirements of subdivision (a), shall be
38 deemed to be within the exemption provided for in subdivision
39 (b) of Section 4 and Section 5 of Article XIII of the California
40 Constitution and this section.

(d) Property used exclusively for a noncommercial educational FM broadcast station or an educational television station, and owned and operated by religious, hospital, scientific, or charitable funds, foundations, limited liability companies, or corporations meeting all of the requirements of subdivision (a), shall be deemed to be within the exemption provided for in subdivision (b) of Section 4 and Section 5 of Article XIII of the California Constitution and this section.

(e) Property used exclusively for religious, charitable, scientific, or hospital purposes and owned and operated by religious, hospital, scientific, or charitable funds, foundations, limited liability companies, or corporations or educational institutions of collegiate grade, as defined in Section 203, which property and funds, foundations, limited liability companies, corporations, or educational institutions meet all of the requirements of subdivision (a), shall be deemed to be within the exemption provided for in subdivision (b) of Section 4 and Section 5 of Article XIII of the California Constitution and this section. As to educational institutions of collegiate grade, as defined in Section 203, the requirements of paragraph (6) of subdivision (a) shall be deemed to be met if both of the following are met:

(1) The property of the educational institution is irrevocably dedicated in its articles of incorporation to charitable and educational purposes, to religious and educational purposes, or to educational purposes.

(2) The articles of incorporation of the educational institution provide for distribution of its property upon its liquidation, dissolution, or abandonment to a fund, foundation, or corporation organized and operated for religious, hospital, scientific, charitable, or educational purposes meeting the requirements for exemption provided by Section 203 or this section.

(f) Property used exclusively for housing and related facilities for elderly or handicapped families and financed by, including, but not limited to, the federal government pursuant to Section 202 of Public Law 86-372 (12 U.S.C. Sec. 1701q), as amended, Section 231 of Public Law 73-479 (12 U.S.C. Sec. 1715v), Section 236 of Public Law 90-448 (12 U.S.C. Sec. 1715z), or Section 811 of Public Law 101-625 (42 U.S.C. Sec. 8013), and owned and operated by religious, hospital, scientific, or charitable funds, foundations, limited liability companies, or corporations meeting

1 all of the requirements of this section shall be deemed to be within
2 the exemption provided for in subdivision (b) of Section 4 and
3 Section 5 of Article XIII of the California Constitution and this
4 section.

5 The amendment of this paragraph made by Chapter 1102 of the
6 Statutes of 1984 does not constitute a change in, but is declaratory
7 of, existing law. However, no refund of property taxes shall be
8 required as a result of this amendment for any fiscal year prior to
9 the fiscal year in which the amendment takes effect.

10 Property used exclusively for housing and related facilities for
11 elderly or handicapped families at which supplemental care or
12 services designed to meet the special needs of elderly or
13 handicapped residents are not provided, or that is not financed by
14 the federal government pursuant to Section 202 of Public Law
15 86-372 (12 U.S.C. Sec. 1701q), as amended, Section 231 of Public
16 Law 73-479 (12 U.S.C. Sec. 1715v), Section 236 of Public Law
17 90-448 (12 U.S.C. Sec. 1715z), or Section 811 of Public Law
18 101-625 (42 U.S.C. Sec. 8013), shall not be entitled to exemption
19 pursuant to this subdivision unless the property is used for housing
20 and related facilities for low- and moderate-income elderly or
21 handicapped families. Property that would otherwise be exempt
22 pursuant to this subdivision, except that it includes some housing
23 and related facilities for other than low- or moderate-income elderly
24 or handicapped families, shall be entitled to a partial exemption.
25 The partial exemption shall be equal to that percentage of the value
26 of the property that is equal to the percentage that the number of
27 low- and moderate-income elderly and handicapped families
28 occupying the property represents of the total number of families
29 occupying the property.

30 As used in this subdivision, “low and moderate income” has the
31 same meaning as the term “persons and families of low or moderate
32 income” as defined by Section 50093 of the Health and Safety
33 Code.

34 (g) (1) Property used exclusively for rental housing and related
35 facilities and owned and operated by religious, hospital, scientific,
36 or charitable funds, foundations, limited liability companies, or
37 corporations, including limited partnerships in which the managing
38 general partner is an eligible nonprofit corporation or eligible
39 limited liability company, meeting all of the requirements of this
40 section, or by veterans’ organizations, as described in Section

215.1, meeting all the requirements of paragraphs (1) to (7), inclusive, of subdivision (a), shall be deemed to be within the exemption provided for in subdivision (b) of Section 4 and Section 5 of Article XIII of the California Constitution and this section and shall be entitled to a partial exemption equal to that percentage of the value of the property that the portion of the property serving lower income households represents of the total property in any year in which any of the following criteria applies:

(A) The acquisition, rehabilitation, development, or operation of the property, or any combination of these factors, is financed with tax-exempt mortgage revenue bonds or general obligation bonds, or is financed by local, state, or federal loans or grants and the rents of the occupants who are lower income households do not exceed those prescribed by deed restrictions or regulatory agreements pursuant to the terms of the financing or financial assistance.

(B) The owner of the property is eligible for and receives low-income housing tax credits pursuant to Section 42 of the Internal Revenue Code of 1986, as added by Public Law 99-514.

(C) In the case of a claim, other than a claim with respect to property owned by a limited partnership in which the managing general partner is an eligible nonprofit corporation, that is filed for the 2000–01 fiscal year or any fiscal year thereafter, 90 percent or more of the occupants of the property are lower income households whose rent does not exceed the rent prescribed by Section 50053 of the Health and Safety Code. The total exemption amount allowed under this subdivision to a taxpayer, with respect to a single property or multiple properties for any fiscal year on the sole basis of the application of this subparagraph, may not exceed twenty thousand dollars (\$20,000) of tax.

(D) (i) The property was previously purchased and owned by the Department of Transportation pursuant to a consent decree requiring housing mitigation measures relating to the construction of a freeway and is now solely owned by an organization that qualifies as an exempt organization under Section 501(c)(3) of the Internal Revenue Code.

(ii) This subparagraph shall not apply to property owned by a limited partnership in which the managing partner is an eligible nonprofit corporation.

1 (2) In order to be eligible for the exemption provided by this
2 subdivision, the owner of the property shall do both of the
3 following:

4 (A) (i) For any claim filed for the 2000–01 fiscal year or any
5 fiscal year thereafter, certify and ensure, subject to the limitation
6 in clause (ii), that there is an enforceable and verifiable agreement
7 with a public agency, a recorded deed restriction, or other legal
8 document that restricts the project’s usage and that provides that
9 the units designated for use by lower income households are
10 continuously available to or occupied by lower income households
11 at rents that do not exceed those prescribed by Section 50053 of
12 the Health and Safety Code, or, to the extent that the terms of
13 federal, state, or local financing or financial assistance conflicts
14 with Section 50053, rents that do not exceed those prescribed by
15 the terms of the financing or financial assistance.

16 (ii) In the case of a limited partnership in which the managing
17 general partner is an eligible nonprofit corporation, the restriction
18 and provision specified in clause (i) shall be contained in an
19 enforceable and verifiable agreement with a public agency, or in
20 a recorded deed restriction to which the limited partnership
21 certifies.

22 (B) Certify that the funds that would have been necessary to
23 pay property taxes are used to maintain the affordability of, or
24 reduce rents otherwise necessary for, the units occupied by lower
25 income households.

26 (3) As used in this subdivision, “lower income households” has
27 the same meaning as the term “lower income households” as
28 defined by Section 50079.5 of the Health and Safety Code.

29 (h) Property used exclusively for an emergency or temporary
30 shelter and related facilities for homeless persons and families and
31 owned and operated by religious, hospital, scientific, or charitable
32 funds, foundations, limited liability companies, or corporations
33 meeting all of the requirements of this section shall be deemed to
34 be within the exemption provided for in subdivision (b) of Section
35 4 and Section 5 of Article XIII of the California Constitution and
36 this section. Property that otherwise would be exempt pursuant to
37 this subdivision, except that it includes housing and related
38 facilities for other than an emergency or temporary shelter, shall
39 be entitled to a partial exemption.

1 As used in this subdivision, “emergency or temporary shelter”
2 means a facility that would be eligible for funding pursuant to
3 Chapter 11 (commencing with Section 50800) of Part 2 of Division
4 31 of the Health and Safety Code.

5 (i) Property used exclusively for housing and related facilities
6 for employees of religious, charitable, scientific, or hospital
7 organizations that meet all the requirements of subdivision (a) and
8 owned and operated by funds, foundations, limited liability
9 companies, or corporations that meet all the requirements of
10 subdivision (a) shall be deemed to be within the exemption
11 provided for in subdivision (b) of Section 4 and Section 5 of Article
12 XIII of the California Constitution and this section to the extent
13 the residential use of the property is institutionally necessary for
14 the operation of the organization.

15 (j) For purposes of this section, charitable purposes include
16 educational purposes. For purposes of this subdivision,
17 “educational purposes” means those educational purposes and
18 activities for the benefit of the community as a whole or an
19 unascertainable and indefinite portion thereof, and do not include
20 those educational purposes and activities that are primarily for the
21 benefit of an organization’s shareholders. Educational activities
22 include the study of relevant information, the dissemination of that
23 information to interested members of the general public, and the
24 participation of interested members of the general public.

25 (k) In the case of property used exclusively for the exempt
26 purposes specified in this section, owned and operated by limited
27 liability companies that are organized and operated for those
28 purposes, the State Board of Equalization shall adopt regulations
29 to specify the ownership, organizational, and operational
30 requirements for those companies to qualify for the exemption
31 provided by this section.

32 (l) The amendments made by Chapter 354 of the Statutes of
33 2004 shall apply with respect to lien dates occurring on and after
34 January 1, 2005.

35 SEC. 3. Section 214.16 is added to the Revenue and Taxation
36 Code, to read:

37 214.16. (a) Any outstanding tax, *interest, or penalty* that was
38 levied *or imposed* upon property that qualifies for an exemption
39 pursuant to Section 214 and satisfies the criteria specified in
40 subparagraph (D) of paragraph (1) of subdivision (g) of Section

1 214 between January 1, 2002, and January 1, 2009, shall be
2 canceled, provided that the owner of the property certifies that all
3 of the following conditions were met at the time the tax was levied:

4 (1) The owner was not organized and did not operate for profit.

5 (2) There was a recorded deed restriction or other legal
6 document that restricted the project's usage and that provided that
7 the units designated for use by lower income households were
8 continuously available to or occupied by lower income households
9 at rents not exceeding those prescribed by Section 50053 of the
10 Health and Safety Code.

11 (3) The funds that would have been necessary to pay property
12 taxes were used to maintain the affordability of, or reduce rents
13 otherwise necessary for, the units occupied by lower income
14 households.

15 (b) For purposes of this section, "lower income households"
16 has the same meaning as defined by Section 50079.5 of the Health
17 and Safety Code.

18 SEC. 4. Notwithstanding Section 2229 of the Revenue and
19 Taxation Code, no appropriation is made by this act and the state
20 shall not reimburse any local agency for any property tax revenue
21 lost by it pursuant to this act.

22 SEC. 5. This act provides for a tax levy within the meaning of
23 Article IV of the Constitution and shall go into immediate effect.